



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18<sup>TH</sup> STREET - SUITE 300

DENVER, CO 80202-2466

<http://www.epa.gov/region08>

DOCKET NO.: CWA-08-2003-0013

IN THE MATTER OF:

MEYERS OIL COMPANY

Respondent

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FINAL ORDER

Pursuant to 40 C.F.R. § 22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby ORDERED to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

November 27, 2002

DATE

SIGNED

Alfred C. Smith

Regional Judicial Officer



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VIII

**DOCKET NO.: CWA-08-2003-0013**

In the Matter of:	)	
	)	
Meyers Oil Company	)	<b>EXPEDITED CONSENT AGREEMENT</b>
	)	
Respondent.	)	

Complainant, United States Environmental Protection Agency, Region VIII, and Respondent, Meyers Oil Company, by their undersigned representatives, hereby settle the civil cause of action arising out of violations of the Spill Prevention Control and Countermeasures (SPCC) Plan regulations found during an inspection on September 19, 2001, and agree as follows:

The Clean Water Act (the Act), as amended, 33 U.S.C. § 1321(b)(6), authorizes the Administrator of EPA to assess administrative penalties against any person who violates the oil pollution prevention (SPCC) regulations, promulgated at 40 CFR Part 112 under Section 311(j) of the Clean Water Act, 33 U.S.C. § 1321(j). This authority has been properly delegated to the undersigned EPA official.

Respondent owns and/or operates an oil products bulk facility located at 1500 West 5<sup>th</sup> Street, Mitchell, South Dakota.

Respondent admits its facility is subject to the SPCC regulations.

Respondent agrees to correct the items cited on the attached List of SPCC Violations within thirty (30) days unless an extension for achieving compliance is granted by EPA at its discretion.

Respondent admits that EPA has jurisdiction in this proceeding.

Respondent waives its right to a hearing before any civil tribunal, to contest any issue of law or fact set forth in this agreement.

This agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent, including but not limited to any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement.

This Agreement contains all terms of the settlement agreed to by the parties.

Respondent consents and agrees to the assessment of a civil penalty of \$1,800.00, which shall be paid by sending, via certified mail, a cashier's or certified check for that amount, payable to "Oil Spill Liability Trust Fund" along with a signed copy of this Agreement, to:

Jane Nakad  
Technical Enforcement Program (8ENF-T)  
USEPA Region 8  
999 18th Street, Suite 300  
Denver, CO 80202-2466

Respondent further agrees and consents that if Respondent fails to pay the penalty amount as required by this agreement once incorporated into the final order, or fails to make the corrective measures to obtain compliance as represented, this agreement is null and void, and EPA may pursue any applicable enforcement options.

The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this agreement and to bind Respondent to the terms and conditions of this agreement.

The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final consent order.

Each party shall bear its own costs and attorneys fees in connection with this matter.

This Consent Agreement, upon incorporation into a final consent order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations described in this agreement.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION VIII,  
Office of Enforcement Compliance and Environmental Justice, Complainant.**

By : **SIGNED** \_\_\_\_\_  
Connally Mears, Director  
Technical Enforcement Program

**Meyers Oil Company, Respondent.**

By: **SIGNED** \_\_\_\_\_

Name: **Don Meyers** **11-12-02** \_\_\_\_\_

Title: **Corporate President** \_\_\_\_\_

## List of SPCC Violations

SPCC Plan [40 C.F.R. § 112.3]:

Failure to prepare and implement a facility SPCC Plan in accordance with 40 C.F.R. § 112.7.

The Meyers Oil Company SPCC Plan was found to be deficient in the following areas:

The SPCC Plan has not been amended to reflect a change in the facility oil storage capacity as required by 40 C.F.R. § 112.5(a).

The SPCC Plan has not been reviewed every three years as required by 40 C.F.R. § 112.7(b).

The Plan does not contain a spill prediction section as required by 40 C.F.R. § 112.7(e)(2)(i).

Tank compatibility with the material stored as required by 40 C.F.R. § 112.7(e)(2)(i).

Procedure for drainage of storm water from tank secondary containment areas in violation of 40 C.F.R. § 112.7(e)(2)(iii).

Tank integrity testing in violation of 40 C.F.R. § 112.7(e)(2)(vi).

Regular testing of tank level sensing devices in violation of 40 C.F.R. § 2.7(e)(2)(viii)(E).

Fails to address the use of mobile or portable storage tanks in violation of 40 C.F.R. § 112.7(e)(2)(xi).

Buried piping not coated or cathodically protected against corrosion in violation of 40 C.F.R. § 112.7(e)(3)(i).

No procedures for capping/blank flanging out-of-service piping in violation of 40 C.F.R. § 112.7(e)(3)(ii).

Fails to address proper design of pipe supports in violation of 40 C.F.R. § 112.7(e)(3)(iii).

No warning to vehicles of exposed piping in violation of 40 C.F.R. § 112.7(e)(3)(v).

Fails to address whether DOT procedures are followed in loading/unloading operations in violation of 40 C.F.R. § 112.7(e)(4)(i).

Indequate secondary containment for loading/unloading areas in violation of  
40 C.F.R. § 112.7(e)(4)(ii).

No warning/barriers/other systems to prevent premature vehicular departure in violation of  
40 C.F.R. § 112.7(e)(4)(iii).

Lacks procedures for examination of bottom drains of vehicles as required in  
40 C.F.R. § 112.7(e)(4)(iv).

Lacks written inspection procedures and retention of inspection records in violation of  
40 C.F.R. § 112.7(e)(8).

Facility not fenced in violation of 40 C.F.R. § 112.7(e)(9)(i).

Does not address draining and back-flanging pipelines in violation of  
40 C.F.R. § 112.7(e)(9)(iv).

Does not address adequate facility lighting in violation of 40 C.F.R. § 112.7(e)(9)(v).

Fails to designate an individual for spill prevention in violation of  
40 C.F.R. § 112.7(e)(10)(ii).

No Self-determination Criteria Form in violation of 40 C.F.R. § 112.20.

Some of the specific violations at Meyers Oil Company are:

Inadequate secondary containment for oil storage tanks in violation of  
40 C.F.R. § 112.7(e)(2)(ii).

## **CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **EXPEDITED CONSENT AGREEMENT/FINAL ORDER** in the matter of **MEYERS OIL COMPANY, DOCKET NO.: CWA-08-2003-0013** was filed with the Regional Hearing Clerk on November 27, 2002.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Michael Risner Enforcement Attorney, U.S. EPA - Region VIII, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt to:

Don Meyers  
Corporate President  
Meyers Oil Company  
1500 W. 5<sup>th</sup> Avenue  
Mitchell, SD 57078

and

Commander  
Finance Center (OGR)  
U.S. Coast Guard  
1430 A Kristina Way  
Chesapeake, VA 23326

November 27, 2002

**SIGNED** \_\_\_\_\_  
Tina Artemis  
Regional Hearing Clerk

**THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON NOVEMBER 27, 2002.**

